

1-1 By: Williams S.B. No. 934
1-2 (In the Senate - Filed February 24, 2011; March 8, 2011,
1-3 read first time and referred to Committee on Transportation and
1-4 Homeland Security; March 28, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 9, Nays
1-6 0; March 28, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 934 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the enforcement of tax laws; providing a criminal
1-11 penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 13.13, Code of Criminal Procedure, is
1-14 amended to read as follows:

1-15 Art. 13.13. CONSPIRACY. Criminal conspiracy may be
1-16 prosecuted in the county where the conspiracy was entered into, in
1-17 the county where the conspiracy was agreed to be executed, or in any
1-18 county in which one or more of the conspirators does any act to
1-19 effect an object of the conspiracy. If the object of the conspiracy
1-20 is an offense classified as a felony under the Tax Code, regardless
1-21 of whether the offense was committed, the conspiracy may be
1-22 prosecuted in any county in which venue is proper under the Tax Code
1-23 for the offense. If a conspiracy was entered into outside this
1-24 State under circumstances that give this State jurisdiction to
1-25 prosecute the offender, the offender may be prosecuted in the
1-26 county where the conspiracy was agreed to be executed, ~~or~~ in the
1-27 county where any one of the conspirators was found, or in Travis
1-28 County.

1-29 SECTION 2. Article 13.21, Code of Criminal Procedure, is
1-30 amended to read as follows:

1-31 Art. 13.21. ORGANIZED CRIMINAL ACTIVITY. The offense of
1-32 engaging in organized criminal activity may be prosecuted in any
1-33 county in which any act is committed to effect an objective of the
1-34 combination or, if the prosecution is based on a criminal offense
1-35 classified as a felony under the Tax Code, in any county in which
1-36 venue is proper under the Tax Code for the offense.

1-37 SECTION 3. Chapter 13, Code of Criminal Procedure, is
1-38 amended by adding Article 13.35 to read as follows:

1-39 Art. 13.35. MONEY LAUNDERING. Money laundering may be
1-40 prosecuted in the county in which the offense was committed as
1-41 provided by Article 13.18 or, if the prosecution is based on a
1-42 criminal offense classified as a felony under the Tax Code, in any
1-43 county in which venue is proper under the Tax Code for the offense.

1-44 SECTION 4. Chapter 42, Code of Criminal Procedure, is
1-45 amended by adding Article 42.0182 to read as follows:

1-46 Art. 42.0182. FINDINGS REGARDING TAX FRAUD. (a) In the
1-47 trial of an offense under the Tax Code or an offense under the Penal
1-48 Code related to the administration of taxes, the state may file a
1-49 written request with the court in which the indictment or
1-50 information is pending for the court to make affirmative findings
1-51 regarding the commission of tax fraud as described by Subsection
1-52 (b). The state must provide a copy of the written request to the
1-53 defendant before the date the trial begins.

1-54 (b) If the state requests affirmative findings in the manner
1-55 required by Subsection (a), the court shall make the requested
1-56 affirmative findings and enter the findings in the papers in the
1-57 case if the court finds by clear and convincing evidence that:

1-58 (1) the defendant's failure to pay a tax or file a
1-59 report when due, as required by Title 2 or 3, Tax Code, was a result
1-60 of fraud or an intent to evade the tax;

1-61 (2) the defendant altered, destroyed, or concealed any
1-62 record, document, or thing, or presented to the comptroller any
1-63 altered or fraudulent record, document, or thing, or otherwise

2-1 engaged in fraudulent conduct for the apparent purpose of affecting
2-2 the course or outcome of an audit, investigation, redetermination,
2-3 or other proceeding before the comptroller; or

2-4 (3) the defendant's failure to file a report under
2-5 Chapter 162, Tax Code, or to pay a tax under that chapter when the
2-6 tax became due is attributable to fraud or an intent to evade the
2-7 application of Chapter 162, Tax Code, or a rule adopted under
2-8 Chapter 111 or 162, Tax Code.

2-9 SECTION 5. Section 403.012, Government Code, is amended to
2-10 read as follows:

2-11 Sec. 403.012. ACCEPTANCE OF FEDERAL MONEY OR PROPERTY.

2-12 (a) The comptroller may accept federal money for a state agency
2-13 not otherwise restricted by statute or by rider or special
2-14 provision in the General Appropriations Act, if the state agency
2-15 has certified to the comptroller that the agency will be
2-16 responsible for compliance with applicable federal and state law.

2-17 (b) The comptroller may accept money or property under a
2-18 federal equitable sharing program. In accepting the money or
2-19 property, the comptroller shall comply with federal program
2-20 requirements, including those governing accounting and the
2-21 permissible use of an award.

2-22 SECTION 6. Subsection (a), Section 411.109, Government
2-23 Code, is amended to read as follows:

2-24 (a) The comptroller is entitled to obtain from the
2-25 department criminal history record information maintained by the
2-26 department that the comptroller believes is necessary for the
2-27 enforcement or administration of Chapter 151, 152, [~~153,~~] 154, [~~or~~]
2-28 155, or 162, Tax Code, including criminal history record
2-29 information that relates to a person who is:

2-30 (1) an applicant for a permit under any of those
2-31 chapters;

2-32 (2) a permit holder under any of those chapters;

2-33 (3) an officer, director, stockholder owning 10
2-34 percent or more of the outstanding stock, partner, owner, or
2-35 managing employee of an applicant or permit holder under any of
2-36 those chapters that is a corporation, association, joint venture,
2-37 syndicate, partnership, or proprietorship;

2-38 (4) believed to have violated any of those chapters;
2-39 or

2-40 (5) being considered by the comptroller for employment
2-41 as a peace officer.

2-42 SECTION 7. Subdivision (4), Section 34.01, Penal Code, is
2-43 amended to read as follows:

2-44 (4) "Proceeds" means funds acquired or derived
2-45 directly or indirectly from, produced through, or realized through:

2-46 (A) an act; or
2-47 (B) conduct that constitutes an offense under

2-48 Section 151.7032, Tax Code.

2-49 SECTION 8. Subsection (a), Section 71.02, Penal Code, as
2-50 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357
2-51 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is
2-52 reenacted and amended to read as follows:

2-53 (a) A person commits an offense if, with the intent to
2-54 establish, maintain, or participate in a combination or in the
2-55 profits of a combination or as a member of a criminal street gang,
2-56 the person commits or conspires to commit one or more of the
2-57 following:

2-58 (1) murder, capital murder, arson, aggravated
2-59 robbery, robbery, burglary, theft, aggravated kidnapping,
2-60 kidnapping, aggravated assault, aggravated sexual assault, sexual
2-61 assault, forgery, deadly conduct, assault punishable as a Class A
2-62 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
2-63 motor vehicle;

2-64 (2) any gambling offense punishable as a Class A
2-65 misdemeanor;

2-66 (3) promotion of prostitution, aggravated promotion
2-67 of prostitution, or compelling prostitution;

2-68 (4) unlawful manufacture, transportation, repair, or
2-69 sale of firearms or prohibited weapons;

- 3-1 (5) unlawful manufacture, delivery, dispensation, or
- 3-2 distribution of a controlled substance or dangerous drug, or
- 3-3 unlawful possession of a controlled substance or dangerous drug
- 3-4 through forgery, fraud, misrepresentation, or deception;
- 3-5 (6) any unlawful wholesale promotion or possession of
- 3-6 any obscene material or obscene device with the intent to wholesale
- 3-7 promote the same;
- 3-8 (7) any offense under Subchapter B, Chapter 43,
- 3-9 depicting or involving conduct by or directed toward a child
- 3-10 younger than 18 years of age;
- 3-11 (8) any felony offense under Chapter 32;
- 3-12 (9) any offense under Chapter 36;
- 3-13 (10) any offense under Chapter 34 or 35;
- 3-14 (11) any offense under Section 37.11(a);
- 3-15 (12) any offense under Chapter 20A;
- 3-16 (13) any offense under Section 37.10; [~~or~~]
- 3-17 (14) any offense under Section 38.06, 38.07, 38.09, or
- 3-18 38.11;
- 3-19 (15) [~~(14)~~] any offense under Section 42.10;
- 3-20 (16) [~~(14)~~] any offense under Section 46.06(a)(1) or
- 3-21 46.14; or
- 3-22 (17) any offense classified as a felony under the Tax
- 3-23 Code.

3-24 SECTION 9. Chapter 101, Tax Code, is amended by adding

3-25 Section 101.0021 to read as follows:
3-26 Sec. 101.0021. APPLICABILITY OF PENAL CODE. In addition to

3-27 Section 1.03, Penal Code, Sections 15.02 and 15.04, Penal Code, and

3-28 Title 11, Penal Code, apply to offenses prescribed by this code.
3-29 SECTION 10. Subchapter A, Chapter 111, Tax Code, is amended

3-30 by adding Section 111.00452 to read as follows:
3-31 Sec. 111.00452. EMPLOYMENT OF INVESTIGATORS. (a) In

3-32 addition to the authority granted by Section 111.0045, an

3-33 investigator employed under that section may investigate:

- 3-34 (1) any criminal offense under this code; or
- 3-35 (2) any criminal offense under any other law if the
- 3-36 offense relates directly or indirectly to a tax, fee, penalty, or
- 3-37 charge administered, collected, or enforced by the comptroller.

3-38 (b) An investigator commissioned by the comptroller as a

3-39 peace officer has the powers of a peace officer coextensive with the

3-40 boundaries of this state.

3-41 SECTION 11. Subsection (c), Section 111.006, Tax Code, is

3-42 amended to read as follows:
3-43 (c) The comptroller or the attorney general may:

- 3-44 (1) use information or records made confidential by
- 3-45 [~~provisions of~~] this title to enforce:
- 3-46 (A) [~~any provisions of~~] this title; or
- 3-47 (B) the criminal laws of this state or the United

3-48 States; or

3-49 (2) [~~may~~] authorize the [~~their~~] use of information or

3-50 records made confidential by this title in a judicial or an

3-51 administrative proceeding in which this state, another state, or

3-52 the federal government is a party.
3-53 SECTION 12. Section 111.061, Tax Code, is amended by adding

3-54 Subsection (c) to read as follows:
3-55 (c) The penalties provided by Subsection (b) are intended to

3-56 be remedial in nature and are provided for the protection of state

3-57 revenue and to reimburse the state for expenses incurred as a result

3-58 of fraud, including expenses incurred in conducting an

3-59 investigation.
3-60 SECTION 13. Subsections (a) and (b), Section 111.207, Tax

3-61 Code, are amended to read as follows:
3-62 (a) In determining the expiration date for a period when a

3-63 tax imposed by this title may be assessed, collected, or refunded,

3-64 the following periods are not considered:
3-65 (1) the period following the date of a tax payment made

3-66 under protest, but only if a lawsuit is timely filed in accordance

3-67 with Chapter 112;

3-68 (2) the period during which a judicial proceeding is

3-69 pending in a court of competent jurisdiction to determine the

4-1 amount of the tax due; ~~and~~
 4-2 (3) the period during which an administrative
 4-3 redetermination or refund hearing is pending before the
 4-4 comptroller; and

4-5 (4) the period during which an indictment or
 4-6 information is pending for a felony offense related to the
 4-7 administration of the Tax Code against any taxpayer or any person
 4-8 personally liable or potentially personally liable for the payment
 4-9 of the tax under Section 111.0611.

4-10 (b) The suspension of a period of limitation under
 4-11 Subsection (a)(1), (2), or (3) ~~[(a)]~~ is limited to the issues that
 4-12 were contested under those subdivisions ~~[Subdivision (1), (2), or~~
 4-13 ~~(3) of that subsection]~~.

4-14 SECTION 14. Subsection (a), Section 151.025, Tax Code, is
 4-15 amended to read as follows:

4-16 (a) All sellers and all other persons storing, using, or
 4-17 consuming in this state a taxable item purchased from a retailer
 4-18 shall keep the following records in the form the comptroller
 4-19 requires:

4-20 (1) records of all gross receipts, including
 4-21 documentation in the form of receipts, shipping manifests,
 4-22 invoices, and other pertinent papers, from each sale, rental,
 4-23 lease, taxable service, and taxable labor transaction occurring
 4-24 during each reporting period;

4-25 (2) records in the form of receipts, shipping
 4-26 manifests, invoices, and other pertinent papers of all purchases of
 4-27 taxable items from every source made during each reporting period;
 4-28 ~~and~~

4-29 (3) records in the form of receipts, shipping
 4-30 manifests, invoices, and other pertinent papers that substantiate
 4-31 each claimed deduction or exclusion authorized by law; and

4-32 (4) records in the form of sales receipts, invoices,
 4-33 or other equivalent records showing all sales and use tax, and any
 4-34 money represented to be sales and use tax, received or collected on
 4-35 each sale, rental, lease, or service transaction during each
 4-36 reporting period.

4-37 SECTION 15. The heading to Section 151.7032, Tax Code, is
 4-38 amended to read as follows:

4-39 Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL
 4-40 PENALTY AND AGGREGATION OF AMOUNTS INVOLVED.

4-41 SECTION 16. Section 151.7032, Tax Code, is amended by
 4-42 amending Subsection (b) and adding Subsection (c) to read as
 4-43 follows:

4-44 (b) An offense under this section is:

4-45 (1) a Class C misdemeanor if the amount of the tax
 4-46 collected and not paid is less than \$50 ~~[\$10,000]~~;

4-47 (2) a Class B misdemeanor if the amount of the tax
 4-48 collected and not paid is \$50 or more but less than \$500;

4-49 (3) a Class A misdemeanor if the amount of the tax
 4-50 collected and not paid is \$500 or more but less than \$1,500;

4-51 (4) a state jail felony if the amount of the tax
 4-52 collected and not paid is \$1,500 ~~[\$10,000]~~ or more but less than
 4-53 \$20,000;

4-54 (5) ~~[(3)]~~ a felony of the third degree if the amount of
 4-55 the tax collected and not paid is \$20,000 or more but less than
 4-56 \$100,000; and

4-57 (6) ~~[(4)]~~ a felony of the second degree if the amount
 4-58 of the tax collected and not paid is \$100,000 or more but less than
 4-59 \$200,000; and

4-60 (7) a felony of the first degree if the amount of the
 4-61 tax collected and not paid is \$200,000 or more.

4-62 (c) When tax is collected and not paid in violation of
 4-63 Subsection (a) pursuant to one scheme or continuous course of
 4-64 conduct, the conduct may be considered as one offense and the
 4-65 amounts aggregated in determining the grade of the offense.

4-66 SECTION 17. Subsection (b), Section 151.707, Tax Code, is
 4-67 amended to read as follows:

4-68 (b) An offense under Subsection (a) ~~[(a)(1) or (a)(2) of~~
 4-69 ~~this section]~~ is:

5-1 (1) a Class C misdemeanor if the tax avoided by the use
5-2 of the exemption or resale certificate is less than \$20;
5-3 (2) a Class B misdemeanor if the tax avoided by the use
5-4 of the exemption or resale certificate is \$20 or more, but less than
5-5 \$200;
5-6 (3) a Class A misdemeanor if the tax avoided by the use
5-7 of the exemption or resale certificate is \$200 or more, but less
5-8 than \$750;
5-9 (4) a felony of the third degree if the tax avoided by
5-10 the use of the exemption or resale certificate is \$750 or more, but
5-11 less than \$20,000; or
5-12 (5) a felony of the second degree if the tax avoided by
5-13 the use of the exemption or resale certificate is \$20,000 or more.

5-14 SECTION 18. Subchapter L, Chapter 151, Tax Code, is amended
5-15 by adding Section 151.7075 to read as follows:
5-16 Sec. 151.7075. FAILURE TO PRODUCE CERTAIN RECORDS AFTER
5-17 USING RESALE CERTIFICATE; CRIMINAL PENALTY. (a) A person commits
5-18 an offense if the person intentionally fails to produce to the
5-19 comptroller records that document a taxpayer's taxable sale of
5-20 items that the taxpayer obtained using a resale certificate.
5-21 (b) The records to which Subsection (a) applies are records:
5-22 (1) required to be kept under Section 151.025; and
5-23 (2) requested by the comptroller under Section 151.023
5-24 that are not produced in the period required by that section.
5-25 (c) The items to which Subsection (a) applies are items the
5-26 sales of which are required to be reported to the comptroller under
5-27 Section 151.433, 154.212, or 155.105.
5-28 (d) An offense under this section is:
5-29 (1) a Class C misdemeanor if the tax avoided by the use
5-30 of the resale certificate is less than \$20;
5-31 (2) a Class B misdemeanor if the tax avoided by the use
5-32 of the resale certificate is \$20 or more but less than \$200;
5-33 (3) a Class A misdemeanor if the tax avoided by the use
5-34 of the resale certificate is \$200 or more but less than \$750;
5-35 (4) a felony of the third degree if the tax avoided by
5-36 the use of the resale certificate is \$750 or more but less than
5-37 \$20,000; or
5-38 (5) a felony of the second degree if the tax avoided by
5-39 the use of the resale certificate is \$20,000 or more.
5-40 (e) It is an affirmative defense to prosecution under this
5-41 section that the items listed for purchase on the resale
5-42 certificate had not been resold at the time of the comptroller's
5-43 request for records under Section 151.023.
5-44 (f) If conduct described by Subsection (a) is related to one
5-45 scheme or continuous course of conduct, the conduct may be
5-46 considered as one offense and the amounts of tax avoided may be
5-47 aggregated in determining the grade of the offense.

5-48 SECTION 19. Section 154.405, Tax Code, is amended by adding
5-49 Subsection (e) to read as follows:
5-50 (e) A forfeiture proceeding under this section is an in rem
5-51 proceeding.

5-52 SECTION 20. Section 154.406, Tax Code, is amended by
5-53 amending Subsection (a) and adding Subsection (d) to read as
5-54 follows:
5-55 (a) The comptroller may sell property forfeited to the state
5-56 at public or private sale in any commercially reasonable manner or
5-57 retain the property for official use by the comptroller's criminal
5-58 investigation division. Property retained for use under this
5-59 subsection may later be sold by the comptroller under this section.
5-60 (d) If an automobile or other vehicle seized under Section
5-61 154.403 is forfeited and retained by the comptroller under
5-62 Subsection (a), the comptroller is considered the owner under
5-63 Subtitle A, Title 7, Transportation Code. The Texas Department of
5-64 Motor Vehicles shall issue a certificate of title for the vehicle to
5-65 the comptroller. The comptroller may maintain, repair, use, and
5-66 operate the vehicle with money appropriated for current operations.

5-67 SECTION 21. Subchapter H, Chapter 154, Tax Code, is amended
5-68 by adding Section 154.407 to read as follows:
5-69 Sec. 154.407. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING

6-1 SEIZED CIGARETTES. (a) The comptroller may photograph cigarettes
 6-2 seized under Section 154.403 before their sale under this
 6-3 subchapter.

6-4 (b) In a proceeding arising out of this chapter, including a
 6-5 criminal proceeding, the state is not required to produce the
 6-6 actual cigarettes.

6-7 (c) The photographs are admissible in evidence under rules
 6-8 of law governing the admissibility of photographs. The photographs
 6-9 are as admissible in evidence as are the cigarettes themselves.

6-10 (d) A person's rights of discovery and inspection of
 6-11 tangible physical evidence are satisfied if the photographs taken
 6-12 under this section are made available to the person by the state on
 6-13 order of any court or other entity having jurisdiction over the
 6-14 proceeding.

6-15 SECTION 22. Section 155.145, Tax Code, is amended by adding
 6-16 Subsection (e) to read as follows:

6-17 (e) A forfeiture proceeding under this section is an in rem
 6-18 proceeding.

6-19 SECTION 23. Section 155.1451, Tax Code, is amended by
 6-20 amending Subsection (a) and adding Subsection (d) to read as
 6-21 follows:

6-22 (a) The comptroller may sell property forfeited to the state
 6-23 at public or private sale in any commercially reasonable manner or
 6-24 retain the property for official use by the comptroller's criminal
 6-25 investigation division. Property retained for use under this
 6-26 subsection may later be sold by the comptroller under this section.

6-27 (d) If an automobile or other vehicle seized under Section
 6-28 155.143 is forfeited and retained by the comptroller under
 6-29 Subsection (a), the comptroller is considered the owner under
 6-30 Subtitle A, Title 7, Transportation Code. The Texas Department of
 6-31 Motor Vehicles shall issue a certificate of title for the vehicle to
 6-32 the comptroller. The comptroller may maintain, repair, use, and
 6-33 operate the vehicle with money appropriated for current operations.

6-34 SECTION 24. Subchapter E, Chapter 155, Tax Code, is amended
 6-35 by adding Section 155.146 to read as follows:

6-36 Sec. 155.146. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING
 6-37 SEIZED TOBACCO PRODUCTS. (a) The comptroller may photograph
 6-38 tobacco products seized under Section 155.143 before their sale
 6-39 under this subchapter.

6-40 (b) In a proceeding arising out of this chapter, including a
 6-41 criminal proceeding, the state is not required to produce the
 6-42 actual tobacco products.

6-43 (c) The photographs are admissible in evidence under rules
 6-44 of law governing the admissibility of photographs. The photographs
 6-45 are as admissible in evidence as are the tobacco products
 6-46 themselves.

6-47 (d) A person's rights of discovery and inspection of
 6-48 tangible physical evidence are satisfied if the photographs taken
 6-49 under this section are made available to the person by the state on
 6-50 order of any court or other entity having jurisdiction over the
 6-51 proceeding.

6-52 SECTION 25. Section 162.401, Tax Code, is amended by adding
 6-53 Subsection (c) to read as follows:

6-54 (c) The penalties provided by Subsection (b) are intended to
 6-55 be remedial in nature and are provided for the protection of state
 6-56 revenue and to reimburse the state for expenses incurred as a result
 6-57 of fraud, including expenses incurred in conducting an
 6-58 investigation.

6-59 SECTION 26. Except as provided by Section 27 of this Act,
 6-60 the changes in law made by this Act apply only to an offense
 6-61 committed on or after the effective date of this Act. An offense
 6-62 committed before the effective date of this Act is covered by the
 6-63 law in effect when the offense was committed, and the former law is
 6-64 continued in effect for that purpose. For purposes of this section,
 6-65 an offense was committed before the effective date of this Act if
 6-66 any element of the offense occurred before that date.

6-67 SECTION 27. The change in law made by this Act in amending
 6-68 Article 13.13, Code of Criminal Procedure, applies only to a
 6-69 criminal case in which the indictment or information is presented

7-1 to the court on or after the effective date of this Act. A criminal
7-2 case in which the indictment or information was presented to the
7-3 court before the effective date of this Act is governed by the law
7-4 in effect when the indictment or information was presented, and the
7-5 former law is continued in effect for that purpose.

7-6 SECTION 28. This Act applies only to a seizure of property
7-7 that occurs on or after the effective date of this Act. A seizure of
7-8 property that occurs before the effective date of this Act is
7-9 covered by the law in effect as it existed on the date the seizure
7-10 occurred, and the former law is continued in effect for that
7-11 purpose.

7-12 SECTION 29. This Act takes effect September 1, 2011.

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